

IN THE COURT OF COMMON PLEAS OF CLINTON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
	:	
	:	
v.	:	No. 175-02-CR
	:	
	:	
FABIAN SMART,	:	
	:	
Defendant.	:	

REPLY TO COMMONWEALTH'S ANSWER

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

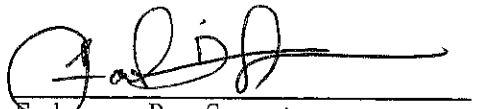
1. The petitioner avers that he qualifies for post-conviction DNA testing under §9543.1(a)(2), because he just learned of the material not being tested during pendency of his direct appeal. In petitioner's first PCRA petition filed October 1, 2007, the petitioner's very first issue was, "trial counsel was ineffective for failing to file a motion to compel discovery of specific items of physical evidence for purposes of forensic testing and/or to have such evidence tested by an expert." The petitioner also submitted that appellate counsel was ineffective for failing to raise trial counsel's ineffectiveness for failing to raise this claim. PCRA counsel raised this claim, but did not request funds for testing during the PCRA stage.

2. The petitioner submits that he does establish a prima facie case because, "DNA testing of the specific evidence, assuming exculpatory results, would establish: a) applicant's actual innocence of the offense for which the applicant was convicted.

The four eyewitnesses who identified the petitioner as the perpetrator had motives to see the petitioner convicted of the crime. The defense was built around the claim that the killing did not take place at the time the witnesses claimed it did, and the petitioner was not the person who committed the killing. In fact, the victim was still alive at least as of Ground Hog's Day. All of the witnesses had an interest in self preservation, and if DNA testing would have been done after the petitioner's first gained knowledge that this organic material wasn't tested, it would have corroborated the defense's claim that the petitioner was not the perpetrator of the killing.

For the foregoing reason and the reasons set forth in his PCRA petition, the petitioner prays that the court grant the relief requested.

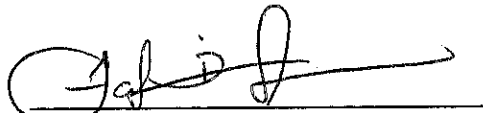
Respectfully submitted,


Fabian D. Smart, pro se

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply To Commonwealth's Answer has been served via first class prepaid U.S. Mail, by depositing the same into the institutional mail system at SCI Greene, Waynesburg, PA, upon Karen E. Kuebler, Esq., Assistant District Attorney, Clinton County District Attorney's Office, 322 East Water Street, Lock Haven, PA 17745, on this the 6th day of June 2012.

Respectfully submitted,


Fabian D. Smart, pro se

DOC Number GC2983
SCI Greene
175 Progress Drive
Waynesburg, PA 15370-8082

VERIFICATION

I hereby certify or verify that the foregoing Reply To Commonwealth's Answer and Certificate of Service are true and correct to the best of my personal knowledge and information and belief and that any false statements contained therein are made subject to the penalty of \$4904 of the Crimes Code, relating to unsworn falsification to authorities.

Date: 6/6/2012


Fabian D. Smart, pro se